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## DOHA Development Agenda: Recapturing the Momentum of Multilateralism and Developing Countries

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# DOHA DEVELOPMENT AGENDA: RECAPTURING THE MOMENTUM OF MULTILATERALISM AND DEVELOPING COUNTRIES

INAAMUL HAQUE\*

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## INTRODUCTION

One hundred and forty-two nations met on November 14, 2001 for the Fourth Ministerial Conference of the World Trade Organization ("WTO").<sup>1</sup> After marathon sessions of negotiations and hard

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1. See World Trade Organization, *Negotiations, Implementation and Development: the Doha Agenda*, at 1 [hereinafter *Doha Agenda*] (noting the fourth meeting of the WTO, which took place in November 2001, addressed approximately one hundred implementation issues), at [http://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm) (last visited Mar. 23, 2002); see generally Helene Cooper & Geoff Winestock, *Tough Talkers: Poor Nations Win Gains in Global Trade Deal, as U.S. Compromises*, WALL ST. J., Nov. 15, 2001, at A1, A12 (stating that there are one hundred forty-two nations in the

bargaining, the members agreed to launch new negotiations on international trade called the "Doha Development Agenda ("DDA").<sup>2</sup> This initiative seeks to change the complexion and orientation of the global trade architecture by making it more supportive of development.<sup>3</sup>

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WTO), available at 2001 WL-WSJ 29677980.

2. See World Trade Organization, Fourth Ministerial Declaration, WT/MIN(01)/DEC/1 (Nov. 20, 2001) [hereinafter Ministerial Declaration] (memorializing the agreement made between the 142 nations that attended the talks at Doha), available at [http://www.wto.org/english/thewto\\_e/minist\\_e/01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/01_e/mindecl_e.htm) (last visited Mar. 23, 2002); see also Ravi Kanthin, *Deal Reached For New WTO Round*, BUS. TIMES (SING.), Nov. 15, 2001 (stating that after six days of battling the members agreed to the Doha Development Agenda, which is designed to generate new talks regarding trade in farm and industrial products), available at 2001 WL 29573414. The Doha Ministerial Conference chose not to use the term "round" in its Declaration. This was presumably done because some developing countries were very much against the concept of a "Multilateral Round of Negotiations." See Tony Smith, *Poor Countries See Chance After Doha*, ASSOCIATED PRESS, Nov. 15, 2001 (detailing how throughout the world, developing nations felt cheated by the last round of world trade talks and complained that the rules were made for and by rich, industrialized nations), available at 2001 WL 30245312. A more positive explanation is that the term "Development Agenda," however, was meant to highlight the qualitatively different orientation of these negotiations. *Id.* Some have noted that the final Declaration is riddled with language intended to help developing nations. *Id.* Furthermore, some delegates also believe it is reasonable to expect that all the euphemisms contained in the language of the Declaration will be quietly forgotten over the coming months and that most participants will be content to admit to a significant round, even if its scope is nothing close to that of the Uruguay Round. See Guy de Jonquieres, *All Night Haggling in Doha Ends in Agreement; WTO Meeting New Mood of Cooperation*, FIN. TIMES, Nov. 15, 2001, at 11 (commenting that the conference ultimately achieved its result by satisfying everyone enough to produce an acceptable agreement and concluding that the conference really sought to foster future talks on global trade liberalization and define the parameters and goals of these talks), available at 2001 WL 31140125.

3. See World Trade Organization, *The WTO Hosts Public Symposium: The Doha Development Agenda and Beyond*, at 1 (referring to the statements of WTO Director General, Mike Moore, who spoke about the Doha Declaration's emphasis on the major role of international trade in the promotion of economic development and the alleviation of poverty), available at [http://www.wto.org/english/tratop\\_e/dda\\_e/symp\\_devagenda\\_02\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/symp_devagenda_02_e.htm) (last visited Mar. 23, 2002).

## A. REACTIONS TO THE DOHA AGREEMENT

### *1. Positive Perception*

A large number of participants warmly greeted the DDA.<sup>4</sup> Mike Moore, Director General of the WTO, highlighted its significance in somewhat hyperbolic terms:

By any standards, the 4th Ministerial Conference of the WTO was an extraordinarily successful meeting. We tend to talk rather glibly about the historic importance of such events, but this time, for once, the claim is not exaggerated; the meeting at Doha will be remembered as a turning-point in the history of the WTO and the trading system and in relations between developed and developing countries within that system.<sup>5</sup>

In a similar vein, Robert Zoellick, the U.S. Trade Representative and head of the U.S. delegation declared, "Members of the WTO have sent a powerful signal to the world. We have removed the stain of Seattle."<sup>6</sup> The *Financial Times* was somewhat less ebullient, but still acknowledged the significance of the accord:

The agreement in Doha, to launch a new round of trade talks pulls the multilateral trading system back from the brink. The accord signals only the start of intense negotiations that could take several years. But a failure to begin would have undermined confidence in the World Trade

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4. See David Williams, *World Trade Ministers Throw off Seattle Curse*, AGENCE FR.-PRESSE, Nov. 15, 2001 (stating that the participants at the Doha conference erased the stigma of the Seattle meeting and explaining that this meeting came at a crucial time of fragile global nerves), available at 2001 WL 25063419.

5. Director-General Mike Moore, Speech at the Fourteenth General Meeting of the Pacific Economic Cooperation Council (Nov. 28, 2001) [hereinafter Moore Speech] (claiming that the Doha conference was an extraordinarily successful meeting and concluding that the meeting at Doha was a turning point for trade negotiation), available at [http://www.wto.org/english/news\\_e/spmm\\_e/spmm73\\_e.htm](http://www.wto.org/english/news_e/spmm_e/spmm73_e.htm) (last visited Mar. 23, 2002).

6. Paul Geitner, *WTO Will Begin a New Round of Talks*, ASIAN WALL ST. J., Nov. 15, 2001, at 2, available at 2001 WL-WSJA 29657108; see also Guy de Jonquieres, *WTO Reaches Agreement to Launch New Trade Talks*, FIN. TIMES, Nov. 15, 2001, at 1 (echoing the positive sentiments that the round of talks helped put the WTO back on track after Seattle).

Organization and more generally in global economic co-operation, just when it is indispensable.<sup>7</sup>

## 2. *A Different Perception by Some*

The representatives of many developing countries were, however, not as jubilant.<sup>8</sup> Some, such as Pakistan's WTO Ambassador, Munir Akram, were plainly disappointed.<sup>9</sup> He stated that, "We don't like it but it's a question of whether we will have to swallow it."<sup>10</sup> Swallow, is exactly what they had to do, when, after a protracted battle, the Indian Commerce Minister ultimately chose to give up on his attempt to block the agreement.<sup>11</sup>

### B. GLIMMER OR CHIMERA?

It would be instructive to examine whether the Doha Agreement really deserves the fulsome praise showered upon it, or whether it is a colossal disappointment.<sup>12</sup> Does the outcome at Doha really signify a recaptured momentum towards multilateralism in global trade or is

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7. Editorial, *A Deal in Doha*, FIN. TIMES, Nov. 15, 2001, at 16.

8. See Cooper & Winestock, *supra* note 1, at A1 (noting that Pakistani envoys said that they were disappointed because they had counted on the WTO talks to boost economic development through trade, not aid).

9. See *id.*

10. *Id.*

11. See Editorial, *supra* note 7 (noting that while nations such as France were hold outs at Doha, "the worst villain was India, which attempted to block the progress of the talks at every turn"). Furthermore, even the developing countries got exasperated with India's WTO representative. The Kenyan Minister accused him of throwing the landmark deal on patents into jeopardy. See *id.* (explaining that Indian Commerce Minister Maran was unchastened as he declared after the agreement was concluded, "I intimidated them."); see also Cooper & Winestock, *supra* note 1, at A1 (explaining that India demanded concessions from the United States and Europe for five days before ultimately giving support to the text of the declaration).

12. See Mary Fagan, *Trade War With the Ink Barely Dry on Doha Agreement to Liberalize World Markets*, SUNDAY TEL., Mar. 10, 2002 at P7 (noting that certain events that have transpired since the conclusion of the Doha conference have upset some of its participants, such as the European trade commissioner, Pascal Lamy), available at 2002 WL 7770861.

it just business as usual in an asymmetrical world? Do we really see a glimmer of hope or just a chimera?

## I. CONCEPT OF MULTILATERISM IN INTERNATIONAL TRADE

### A. DEFINITION OF MULTILATERALISM

This paper attempts to address the question of whether the Doha Accord has rescued the multilateral trading system from the edge of a precipice. Multilateralism, in the context of global trade, is defined as "an approach to the conduct of international trade based on cooperation, equal rights and obligations, non-discrimination and participation as equals of many countries regardless of their size or share of international trade."<sup>13</sup>

Multilateralism is not just a matter of form.<sup>14</sup> The essence of this concept lies in an approach anchored in a philosophy of cooperation, equity, and non-discrimination.<sup>15</sup> Multiculturalism seeks to foster a sense of real and substantive symmetry,<sup>16</sup> which envisions meaningful participation in the process by all actors, irrespective of their size or weight in global trade.<sup>17</sup> Obviously, mere adherence to

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13. DICTIONARY OF TRADE POLICY TERMS 187 (2nd ed. 1998).

14. See Wesley A. Cann, Jr., *Creating Standards and Accountability for the Use of the WTO Exception: Reducing the Role of Power-Based Relations and Establishing a Balance Between Sovereignty and Multilateralism*, 26 YALE J. INT'L L. 413, 423 (2001) (explaining that the 1982 Ministerial Declaration supported multilateralism but failed to establish any real obligations).

15. See Kevin C. Kennedy, *Why Multilateralism Matters in Resolving Trade-Environment Disputes*, 7 WIDENER L. SYMP. J. 31, 68 (2001) (suggesting that since multilateralism is rule-based, it will be helpful to developing countries because such nations need rules-based regimes to help resolve disputes with developed nations, in a predictable and consistent manner).

16. See Sungjoon Cho, *Breaking the Barrier Between Regionalism and Multilateralism: A New Perspective on Trade Regionalism*, 42 HARV. INT'L L. J. 419, 421 (explaining that the global trading system requires a new paradigm that is capable of overcoming deficiencies and outdated elements of earlier trade agreements).

17. See Cann, *supra* note 14, at 418 (stating that GATT was designed to improve international trade by creating arrangements that were reciprocal and mutually advantageous to the nations involved but concluding that GATT's true goal was to create additional global wealth).

the formal component of multilateralism is not sufficient.<sup>18</sup> Rather, it is critical to respect and appreciate the spirit of this concept.<sup>19</sup>

## B. IMPLICATIONS OF MULTILATERALISM

Multilateralism in the true sense of the word<sup>20</sup> would require that the needs and concerns of developing countries,<sup>21</sup> which have come to constitute the overwhelming majority of WTO membership, be meaningfully addressed.<sup>22</sup> Trade negotiations should therefore be guided by the principles of fairness and thoroughness.<sup>23</sup>

In order to ascertain whether the principles of multilateralism have benefited developing countries under the DDA, it is necessary to examine: the relevant features of the existing global trade architecture; the current position of developing countries in WTO system; and the concerns and interests of developing countries.<sup>24</sup>

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18. See *id.* (detailing how GATT sought to encourage free trade as a means to a more comprehensive end—that of increasing wealth on a global scale).

19. See *id.* (concluding that GATT demonstrates the true spirit of multilateralism by raising global standards of living and to ensuring that developing nations share in the benefits).

20. See *id.* (defining the true elements of multilateralism as suggested by GATT).

21. See John O. McGinnis, *World Trade Agreements Advancing the Interests of the Poorest of the Poor*, 34 IND. L. REV. 1361, 1362 (2001) (arguing that multilateralism is beneficial to poor and developing nations and acts as attractive bait to leaders of despotic regimes).

22. See Cann, *supra* note 14, at 418 (suggesting that multilateralism requires some substantive obligations by nations that are participants in trade agreements).

23. See Joseph E. Stiglitz, *Two Principles for the Next Round, or How to Bring Developing Countries in from the Cold*, in *DEVELOPING COUNTRIES AND THE WTO: A PROACTIVE AGENDA* 7, 11 (Bernard Hoekman & Will Martin, eds. 2001) (stating that the principles of fairness and comprehensiveness are crucial to the success of the next round of trade talks because they necessitate the inclusion of issues that are important to developing nations).

24. See Cann, *supra* note 14, at 418 (recognizing special needs of developing countries in the WTO Agreement and stating that the absence of standards perpetuated by a minority of countries poses a threat to the security of the entire international trade system).



### C. EXISTING MULTILATERAL TRADING SYSTEM

In 1947, the General Agreement on Tariffs and Trade ("GATT") established the GATT/WTO multilateral trading system that exists today.<sup>25</sup> Prior to the GATT, bilateral agreements between states primarily resolved disputes involving international trade.<sup>26</sup> The need for establishing a rules-based, multilateral trading system was acutely felt after the unfortunate experience of beggar-thy neighbor policies and extreme protectionism during the inter-war years.<sup>27</sup> The GATT, however, was intended to be a provisional arrangement.<sup>28</sup> Its drafters ultimately intended to establish a third pillar of the Bretton Woods system and to continue developing the new global architecture.<sup>29</sup> That attempt failed, however, and the GATT filled up

25. See General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT] (making a provisional agreement that laid the foundation for the Havana Charter); see also Paul Demaret, *The Metamorphoses of the GATT: From the Havana Charter to the World Trade Organization*, 34 COLUM. J. TRANSNAT'L L. 123, 126 (1995) (explaining that GATT was a gap filler and that the Havana Charter was an agreement of much broader scope that established the International Trade Organization and an elaborate dispute settlement procedure and concluding that the Havana Charter never entered into force because the United States failed to ratify it, and as a result, the General Agreement, by force of circumstances, remained in force). Ultimately, in pursuance of the Uruguay Round Final Act in 1994, GATT was subsumed into the new international organization, the WTO. See JOHN H. JACKSON, *THE WORLD TRADING SYSTEM* 36-42 (1997) (remarking that in some ways the WTO, after many years, has become the missing "leg" of the Bretton Woods "stool").

26. See Stephen Zamora, *Economic Relations and Development*, in 1 UNITED NATIONS LEGAL ORDER 503, 515 (Oscar Schacter & Christopher C. Joyner eds. 1995) (discussing how, prior to GATT, bilateral trade agreements resolved international trade issues between nations).

27. See Kennedy, *supra* note 15, at 68 (stating the problems such as currency devaluation underscore the need for rule-based regimes for resolving disputes between developed and developing nations).

28. See Demaret, *supra* note 25, at 126 (underscoring that GATT was intended to be a temporary provision).

29. See World Trade Organization, *Roots: From Havana to Marrakesh* [hereinafter *Roots: From Havana to Marrakesh*] (stating that the original intention of GATT was to both create a institution to handle international economic cooperation and join the Bretton Woods institutions of the World Bank and the International Monetary Fund), at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm) (last visited Mar. 23, 2002).

the vacuum.<sup>30</sup> The progressive liberalization of tariffs,<sup>31</sup> the most favored nation trading status,<sup>32</sup> and the national treatment principles are now the fundamental principles of GATT.<sup>33</sup> There have been eight rounds of multilateral trade negotiations under GATT that have slashed industrial tariffs from an average of 40 percent to 3.8 percent.<sup>34</sup> As a consequence, world trade has expanded fourteen-fold since the GATT came into effect.<sup>35</sup>

#### D. OTHER FEATURES OF THE SYSTEM

Other features to the current world trading system include:

*Selective liberalization/reduction of tariffs:* The prevailing pattern of protection is biased against poor countries because the barriers are highest on goods produced by them—agriculture and unskilled labor intensive products and labor intensive services.<sup>36</sup>

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30. See *id.* (noting how GATT's basic legal text remained the way it was in 1948 for almost half a century and in that sense filled in for Bretton Woods).

31. See World Trade Organization, *What Is WTO?* [hereinafter *What Is WTO?*] (listing the three main purposes of the WTO, the first of which addresses tariffs), available at [http://www.wto.org/english/thewto\\_e/tif\\_e/factl\\_e.htm](http://www.wto.org/english/thewto_e/tif_e/factl_e.htm) (last visited Mar. 23, 2002).

32. See JACKSON, *supra* note 25, at 36-42 (stating that a second but equally important obligation of GATT is the Most Favored Nation obligation); see also GATT, *supra* note 25, art. I (describing most favored nation trading status).

33. See GATT *supra* note 25, art. III (codifying the National Treatment on Internal Taxation and Regulation and the manner in which imports are taxed to protect domestic production).

34. See *What Is WTO?*, *supra* note 31 (stating that there have been several rounds of WTO meetings and these meetings have resulted in a reduction of tariffs to a low of less than four percent in industrialized nations).

35. See *id.* (offering the experience of world trade and economic growth since World War II as evidence that there is an economic case for an open trading system).

36. See Bernard Hoekman, *Strengthening the Global Trade Architecture for Development: The Post Doha Agenda*, Nov. 16, 2001, at 2 (previewing how global trade architecture may be made more supportive of development), available at <http://www1.worldbank.org/wbiep/trade/strengthening.pdf> (last visited Mar. 23, 2002). Agriculture and labor intensive products, constituting more than half the exports of developing countries (and about seventy percent of that of the least developed countries), face many barriers in the industrial countries. *Id.* at 6. These barriers include steeply escalating, non-transparent tariffs, tariff peaks, and a plethora of domestic and export subsidies. *Id.* Tariff rates on developing countries'

*Use of Trade for Non Trade Objectives:* Interest groups are increasingly seeking to use trade as a tool to enforce rules for non-trade objectives and policies.<sup>37</sup>

*Relatively Ineffective Participation of Developing Countries in WTO:* This, to a great extent, stems from capacity constraints. As a result, the WTO agenda items and multilateral rules, at times, do not fully reflect their interests.<sup>38</sup>

*High Cost of Negotiations:* As negotiation and implementation of agreements can be costly, there is a danger of resource diversion

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exports are four times of those imposed on exports from industrial countries (3.4 percent as compared to 0.8 percent). Tariffs, in fact, for some commodities total over one hundred percent. *Id.* at 5. Such peak rates (above fifteen percent) are often concentrated in products that are exportable items to developing countries. *Id.* In 1999, in the United States alone, imports originating in the least developed countries ("LDCs") generated tariff revenue of \$487 million, equal to 11.6 percent of the value of their exports to the United States and 15.7 percent of dutiable imports. *See* Hoekman, *supra* note 36, at 5. Support to their agriculture producers alone in high-income countries is roughly one billion dollars a day or more, which is more than six times of all the revenue flows to developing countries. *Id.* at 6. Again, the situation with respect to manufacturing leaves much to be desired from the point of view of developing countries. Despite the Agreement on Textiles and Clothing ("ATC"), gains have still failed to increase, substantially due to the back loaded architecture of the ATC, envisaging the largest segment of liberalization at the end of the transition period by January 1, 2005. *Id.* at 6. Furthermore, reintegration of this sector by itself does not take care of the tariff barriers. Market access will remain restricted unless tariff rates are lowered. In addition, there are substantial barriers to market access in respect of services. *Id.* at 7. According to one calculation, income gains that could accrue to developing countries' nationals through allowing an increase in temporary access by service suppliers would be equivalent to approximately \$300 billion. *Id.* at 6. To put things in perspective, however, it would be pertinent to note that the current degree of protection on goods manufactured in developing countries (though lowered in the recent past) constitutes a significant barrier. *See generally* Hoekman, *supra* note 36, at 5-8. For instance, the tariff average in developing nations is four times higher as compared to duty regime in the high-income countries (12.8 percent vs. 3.4 percent). *Id.* This shows the possibility of welfare gains should developing countries seek further reciprocal tariff liberalization. *Id.*

37. *See, e.g.,* Greenpeace, *Safe Trade in the Twenty-First Century: The Doha Edition*, Aug. 2001, at 8 (stating that the WTO operates in a manner inconsistent with its own charter, which provides for "the optimal use of the world's resources in accordance with the objective of sustainable development"), available at <http://www.greenpeace.org/search.shtml> (last visited Apr. 7, 2002).

38. *See, e.g.,* Cooper & Winestock, *supra* note 1, at A1 (noting the disappointment and frustration of the Pakistani delegation to the Doha conference).

away from development priorities.

*Legalistic Bias:* There is an excessive reliance on litigation to enforce agreements.<sup>39</sup>

## II. DEVELOPING COUNTRIES AND THE WTO SYSTEM

### A. DOMINANT ROLE OF INDUSTRIALIZED COUNTRIES

When twenty-three nations, mainly comprised of wealthy nations, agreed to become contracting parties to the GATT, the needs and interests of developing nations did not appear to matter much.<sup>40</sup> Industrialized nations, who were then rebuilding their economies, focused upon integration among themselves.<sup>41</sup> Europe, North America, and Japan concentrated on restoring trade relations through a series of multilateral trade liberalization agreements under the auspices of the GATT.<sup>42</sup> The majority of developing countries continued to export primary commodities, which further diminished their influence and voice in the world trading system.<sup>43</sup> As one commentator notes, the developing countries were, and remained for a long time, marginal entities in the system:

Instead of aggressively seeking market access in the industrialized world, these countries defensively sought special and differential treatment on commitments to open their markets, and they obtained marginal trade preferences or concessions on a nonreciprocal basis. Not surprisingly,

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39. See generally Andrea Kupfer Schneider, *Getting Along: The Evolution of Dispute Resolution Regimes in International Trade Organizations* 20 MICH. J. INT'L L. 697, 702 (1999) (underscoring the importance of alternate dispute resolution regimes in international trade).

40. See Stiglitz, *supra* note 23, at 8-9 (noting that rich countries sometimes play down the political pressures within developing countries).

41. See *Roots: From Havana to Marrakesh*, *supra* note 29 (explaining how in the early years, GATT trade rounds focused on further reducing tariffs).

42. See *id.* (pointing out that the Tokyo round was the first significant attempt to tackle trade barriers).

43. See *id.* (stating that GATT's basic legal text remained relatively unchanged for almost half a century and that much of the achievement stemmed from the multilateral negotiations between the major players, the twenty-three developed nations).

even while they were "free riding" by virtue of the GATT's most favored nation (MFN) principle, they received new concessions of specific interest to them.<sup>44</sup>

Thus, the initial multilateral trading regime excluded any meaningful role for the developing world.<sup>45</sup>

## B. URUGUAY ROUND: A CHANGE IN THE NATURE OF PARTICIPATION

Despite many defects from the developing countries' points of view, the Uruguay Round signaled a change in the nature of the participation of developing countries in the world trading system.<sup>46</sup> Trade scholars note:

For the first time, developing country participants chose to strike bargains on the basis of reciprocity. By and large, they committed themselves to lowered industrial and agricultural tariffs, accepted stringent disciplines in new areas such as intellectual property, and opened up some of their services sectors in return for improved and more secure market access for their exports, particularly for agricultural products and clothing. The new WTO subjected these commitments to a stricter and more effective dispute settlement mechanism, one that developing countries have been increasingly using.<sup>47</sup>

## C. FORMAL PARTICIPATION PROCESS

Formal participation in the 1960 Dillon Round of multilateral negotiations included only thirty-nine participants, mostly from

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44. Jayashree Watal, *Developing Countries' Interests in a Development Round*, in *THE WTO AFTER SEATTLE* 71 (Jeffrey J. Schott ed., 2000) (explaining that for many decades, developing nations were not significant players in the rounds of multilateral trade negotiations in GATT).

45. *See supra* notes 40-44 and accompanying text (examining why the developing world was initially excised from the world trading system).

46. *See* Watal, *supra* note 44, at 72 (explaining that low market access payoffs and the heavy burden of implementing certain WTO agreements made developing nations believe that they were not gaining much from the Uruguay Round).

47. *Id.* at 71 (arguing that Uruguay was a watershed in the participation of developing nations in the trading system).

developed countries.<sup>48</sup> In contrast, Doha had one hundred forty-two participants with more than seventy percent of these being from the developing world.<sup>49</sup> The huge presence of developing countries is indicative of their increasing weight in the global economy and the fact that these countries account for more than one-third of the merchandise trade.<sup>50</sup> Their stake in the positive evolution of the world trading system is increasing.<sup>51</sup> These impressive aggregate figures, however, conceal enormous differences among developing countries, a large number of which actually trade less today than they did twenty years ago.<sup>52</sup>

#### D. COMMON FEATURES AMID DIVERSITY

In the context of the WTO, the priorities and interests of developing countries assume marked variety and even divergence.<sup>53</sup> In some cases, certain developing countries have become part of alliances that include developed countries, such as the Cairns Group

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48. See WORLD BANK, GLOBAL ECONOMIC PROSPECTS AND THE DEVELOPING COUNTRIES xi (2002) [hereinafter GLOBAL ECONOMIC PROSPECTS] (discussing the background information of past negotiations, specifically the type and number of participating countries), available at [www.worldbank.org/prospects/gep2002/sumend.pdf](http://www.worldbank.org/prospects/gep2002/sumend.pdf) (last visited Mar. 19, 2002).

49. See *id.* (highlighting the increase in participation by countries, especially those considered developing nations).

50. See *id.* (explaining that the increased number of developing countries at the negotiations is representative of their power in the global economy because their portion of world trade has grown substantially).

51. See *id.* (arguing that developing nations have a larger interest in the newest round of negotiations because they have increased their trading).

52. See WORLD BANK, GLOBALIZATION, GROWTH AND POVERTY: BUILDING AN EXCLUSIVE WORLD ECONOMY 4-5 (2002) (noting that the export share of the least developed countries shrank from 3 percent in the 1950s to around 0.5 percent in the early 1980s and has hovered at this very low rate over the last two decades); see also UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, DUTY AND QUOTA FREE MARKET ACCESS FOR LDCs: AN ANALYSIS OF QUAD INITIATIVES (2001) (discussing the decrease in the amount of goods exported by the developing countries internationally), available at <http://www.unctad.org/en/docs/poditctabm7en.pdf> (last visited Mar. 22, 2002).

53. See BHAGIRATH LAL DAS, THE WTO AGREEMENTS: DEFICIENCIES, IMBALANCES AND REQUIRED CHANGES xi (1998) (stating that some researchers believe that the developing countries are so diverse that they should not be joined together as a group for analysis or negotiating purposes).

of agricultural exporters.<sup>54</sup> Despite this increasing diversity and divergence, some commentators note that developing countries still share certain significant and common features:

A very large number of [developing nations] have intrinsic economic weaknesses. They are also technologically weak. Resources devoted to research and development in these countries are small and their share in industrial innovations is negligible compared to those in developed countries. Their infrastructure for manufacture and trade as well as modern services is weak. They are short of resources for investment in these areas. All these handicaps indicate bleak prospects not only for the present but also in the near future.<sup>55</sup>

#### E. THE STAKE OF DEVELOPING COUNTRIES IN THE MULTILATERAL SYSTEM

Developing countries are fully aware of their high stake in the evolving WTO multilateral trading system.<sup>56</sup> They understand the need for a transparent and rules-based trading system and an effective dispute settlement mechanism even more than the developed countries.<sup>57</sup> They also appreciate the rationale for open trade and the necessity of expanding the multilateral trade agenda.<sup>58</sup> These countries, however, have serious apprehensions about the course that the multilateral system is taking.<sup>59</sup>

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54. See Cairns Group, *An Introduction* (explaining that the Group is a coalition of eighteen agricultural exporters, consisting of developed and developing countries), available at <http://www.cairnsgroup.org/introduction.html> (last visited Mar. 19, 2002). Members include: Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, the Philippines, South Africa, Thailand, and Uruguay. *Id.*

55. LAL DAS, *supra* note 53, at xi (recording the large number of features common to developing nations).

56. See A.V. Ganesan, *Seattle and Beyond: Developing-Country Perspectives*, in *THE WTO AFTER SEATTLE* 85 (Jeffrey J. Schott ed., 2000) (discussing the developing countries view of the importance of their participation in the negotiations).

57. See *id.* (explaining the type of trading system that the developing nations would prefer and would benefit their countries the most).

58. See *id.* (arguing that the developing nations understand the reasoning behind the agenda expansion).

59. See *id.* (noting that while the countries understand the new expansion being

### III. DEVELOPING COUNTRIES' CONCERNS ON THE EVE OF THE DOHA MINISTERIAL

#### A. DISSATISFACTION AND RESERVATION

When developing countries arrived in Doha with memories of the Seattle debacle still fresh in their minds, they had serious concerns that the multilateral system:

[Was] leaving intact barriers to markets whose removal would otherwise stimulate pro-poor growth, has become less fair and less relevant to their development concerns; that the trade agenda is being expanded to include only issues in which the developed countries have an interest; and that multilateral rules are increasingly becoming a mere codification of existing laws and rules prevalent in developed countries, but which are inappropriate or unenforceable in developing countries.<sup>60</sup>

While the major trading partners (the United States, the European Union, Japan, and Canada) sought to launch a "new round" of multilateral negotiations,<sup>61</sup> some of the like-minded developing countries did not share the same objective.<sup>62</sup> They were disappointed with the past rounds of trade negotiations and therefore opposed a new round, in spite of the apparent beneficial potential of comprehensive multilateral talks.<sup>63</sup> The primary concerns of the developing countries about a new round of talks were:

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made in trade, they are apprehensive that developed countries are influencing the new negotiations too much).

60. *Id.* (detailing the concerns of the developing states regarding the evolution of the multilateral system which favors developed nations); see also GLOBAL ECONOMIC PROSPECTS *supra* note 48, at xi (describing the issues facing the developing states through the multilateral system of trade).

61. LAL DAS, *supra* note 53, at 1 (stating that the developed nations of the world supported a new round of negotiations).

62. See *Like Minded Group Sets Out Positions Before Doha*, 5 ICTD BRIDGES WKLY. TRADE NEWS DIG. 26 (2001) [hereinafter *Like Minded Group*] (listing the members of the like-minded groups as Cuba, the Dominican Republic, Egypt, Honduras, Indonesia, India, Kenya, Malaysia, Sri Lanka, Tanzania, Uganda, Zimbabwe, and Jamaica), available at <http://www.ictsd.org/html/weekly/10-07-01/story2.htm> (last visited Mar. 22, 2002).

63. See *id.* (clarifying the like-minded group's position that even if progress is made regarding the implementation issues, that does not guarantee that the group will participate in the negotiations).



- (i) they would be the main targets for extracting concessions in any new round;
- (ii) new subjects of interest to developed countries in which the developing countries themselves had no particular interest would be taken up for negotiations; and
- (iii) the subjects which had been of interest to them for a long time would get ignored, as the focus of GATT would shift to the new issues initiated in the round.<sup>64</sup>

Many other developing countries, however, still believed that a round should be launched because, in their view, the problems could be addressed only through comprehensive negotiations where bargains could be made.<sup>65</sup> The World Bank advocated launching a "Development Round" to advance development objectives, particularly poverty reduction.<sup>66</sup>

## B. PIVOTAL ISSUE FOR DEVELOPING COUNTRIES

For developing countries, securing greater market access for their goods and services was the pivotal issue during negotiations.<sup>67</sup> In this broad context, developing countries sought both the faithful execution (both in letter and spirit) of commitments made in the Uruguay Round and increased flexibility in the implementation of the WTO rules.<sup>68</sup> The critical implementation issues related to textiles and clothing, anti-dumping, and the Agreement on Trade-Related Intellectual Property Rights ("TRIPs"), but they were

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64. See LAL DAS, *supra* note 53, at 1 (explaining that because the intense interest from developed nations, the developing countries were apprehensive about a new round of negotiations).

65. See Jeffrey J. Schott, *The WTO After Seattle*, in *THE WTO AFTER SEATTLE* 15-16 (Jeffrey J. Schott ed., 2000) (listing the numerous issues of the developing nations that could only be addressed through the Ministerial negotiations).

66. See GLOBAL ECONOMIC PROSPECTS, *supra* note 48, at xii (advocating that the next WTO Ministerial should be used to develop negotiations in order to reduce trade barriers and poverty).

67. See Ganesan, *supra* note 56, at 85 (stating that the central element to the developing countries' strategy is now to gain access to market and compete in the world marketplace).

68. See *id.* at 87 (arguing that increased flexibility in the application and definition of rules would help the developing countries create plans that satisfy their particular needs).

equally interested in the built-in agenda sectors of agriculture, services, and intellectual property.<sup>69</sup> They wanted a further reduction of domestic farm supports, elimination of export supports, and substantial reductions in agriculture tariffs.<sup>70</sup> (Though some food importing developing countries wanted special exemptions on account of their non-trade concerns). With respect to services, developing countries advocated for greater movement of natural persons.<sup>71</sup> Under TRIPs, they sought both the correction of imbalances and substantial reviews of the existing accord.<sup>72</sup> The developing nations were very apprehensive about the incorporation of non-trade issues, such as environmental and labor standards, within the WTO.<sup>73</sup>

### C. CONTEXT OF MINISTERIAL MEETINGS

The context in which Ministers met was conducive to progress.<sup>74</sup> This was important because a failure to reach a consensus on a

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69. See World Trade Organization, *Implementation Issues Central to WTO Future Work Programme* (2002) (stating that for many developing nations, "capacity restraints have been a major obstacle to the dull implementation of Uruguay Round Agreements"), available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/brief\\_e/brief07\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/brief_e/brief07_e.htm) (last visited Mar. 19, 2002).

70. See World Trade Organization, *Agriculture: Current Negotiations, Implementation and Doha* (2002) (noting that the reduction in subsidies, domestic support, and import barriers are important to reforming global agricultural trade), available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/brief\\_e/brief04\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/brief_e/brief04_e.htm) (last visited Mar. 19, 2002).

71. See World Trade Organization, *Trade in Services: The Work Programme and the Current Negotiations* (2002) (stating that the negotiating countries wanted to liberalize sections of the General Agreement on Trade in Services, including the annexes that cover the movement of natural persons who services in another country), available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/brief\\_e/brief06\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/brief_e/brief06_e.htm) (last visited Mar. 19, 2002).

72. See *Like Minded Group*, *supra* note 62, at 26 (stating that the developing countries believe that the problems and imbalances with private profits and public policies should be redressed along with certain technology transfer obligations).

73. See Ganesan, *supra* note 56, at 87 (noting that developing nations are concerned about the inclusion of environmental and labor issues into the agenda).

74. See Moore Speech, *supra* note 5, at 3 (remarking that the preparations made for Doha were different than those completed for the Seattle talks, which perhaps led to further progress in the negotiations).

widely acceptable work program would have led many to question the very value of the institution itself.<sup>75</sup> The new negotiations invoked both strong and negative memories of Seattle.<sup>76</sup> The failure of the Seattle Ministerial to launch a new round was indeed unfortunate and without a parallel in the history of the postwar global trading system.<sup>77</sup> One commentator noted that:

Never before had countries come together to start a negotiation and failed to do so. Prior rounds were replete with instances of missed deadlines and "time-outs" before talks were completed (for example, the Brussels ministerial in December 1990, which failed to conclude the Uruguay Round), but ministers had never before failed to agree to start talking about trade problems and their possible remedies when they all convened to do so. Never before had the failure involved questions about the legitimacy of the trading system itself.<sup>78</sup>

Another debacle would have inflicted great damage to the multilateral rules-based system and would have condemned it to a long period of hibernation.<sup>79</sup> Specifically, as WTO Director-General, Mike Moore states:

The current negotiations on agriculture and trade in services would have run into the sand - destroying hope of bringing an end to the wasteful and damaging abuse of agricultural export subsidies. The concerns of developing countries about the implementation of existing agreements, which have largely dominated the work of the WTO for the past two years, would have been sidelined. Inequities in the system—and they do exist—would have been set in stone.<sup>80</sup>

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75. *See id.* at 6 (stating that if there had been a failure at Doha, many countries might have looked elsewhere besides the WTO to address their trade concerns).

76. *See id.* at 3 (noting that the Seattle negotiations experienced many problems that the ministers tried to avoid at the Doha meeting).

77. *See* Schott, *supra* note 65, at 5 (highlighting that Seattle was the first time that trade negotiators failed to make any progress or even begin discussions regarding trade initiatives).

78. *Id.*

79. *See* Moore Speech, *supra* note 5, at 6 (explaining that any failure could have lead to the creation of regional trade agreements that do not take the developing countries into consideration).

80. *Id.*

## IV. DOHA MINISTERIAL DECLARATION

### A. ACKNOWLEDGEMENT OF THE POSITIVE CONTRIBUTION OF MULTILATERALISM

The Doha Ministerial addressed enormous challenges in the world trading system.<sup>81</sup> The Doha Declaration begins by acknowledging the positive contribution of the “multilateral trading” system in fostering economic growth and development.<sup>82</sup> It articulates the determination to maintain the process of reform and liberalization of trade policies and contains a pledge to reject the use of protectionism.<sup>83</sup>

### B. AFFIRMATIONS OF INTEREST TO DEVELOPING COUNTRIES

Of special interest to developing countries is the part of the Declaration that states:

We recognize the need for all our people to benefit from the increased opportunities and welfare gains that the multilateral trading system generates. The majority of WTO are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration. Recalling the Preamble to the Marrakesh Agreement, we shall continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development. In this context, enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity-building programmes have important roles to play.<sup>84</sup>

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81. See *infra* notes 82-121 and accompanying text (acknowledging the many controversial areas that the Doha conference attempted to address).

82. See Ministerial Declaration, *supra* note 2, para. 1 (stating that not only has the multilateral trading system increased economic growth in the last fifty years, it will continue to do so in the future).

83. See World Trade Organization Ministerial Conference, *Draft Ministerial Declaration*, WT/MIN(01)/DEC/W/1, at para. 1 (Nov. 14, 2001) (announcing the ideals of the declaration as agreed upon by the participants), available at <http://docsonline.wto.org/> (last visited Mar. 20, 2002).

84. *Id.* para. 2 (pledging that the declaration seeks to protect the interests of the developing countries and most importantly the least developed countries around the world).

These brave words and noble sentiments are assuringly full of references to a concrete plank of intended actions. The critical question is whether this eloquent and comprehensive articulation will simply adorn the preamble to Doha Declaration (which is essentially hortatory, non-operative embellishment) or will it see a reasonable operational fulfillment?

### C. AGENDA SETTING

From the very beginning, developing countries accorded great importance to the process of agenda setting.<sup>85</sup> They believe that an agenda, which reflects their interests, is a necessary condition for a balanced and sufficiently broad-based negotiating outcome.<sup>86</sup> It was, of course, recognized that agenda setting was not the only condition necessary for a balanced outcome.<sup>87</sup> A balanced outcome was difficult to achieve due to the inherently asymmetrical bargaining power of the players in global trade arena.<sup>88</sup> Ignoring this overarching constraint, a balanced outcome would be possible only through effective participation by developing countries in market access bargaining and rule making, which in turn requires both a careful analysis of issues and preparation for negotiations.<sup>89</sup> In this context, capacity restraints seriously handicap a large number of developing countries.<sup>90</sup>

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85. See *Gist of APEC Trade Minister Meeting Statement*, KYODO NEWS INT'L, INC., June 11, 2001, at 1 (noting that the trade ministers of the Asia-Pacific Economic Cooperation met before the negotiations and decided that the agenda was imperative).

86. See *id.* (stating that the agenda for the negotiations must be balanced for all countries and must include issues important to developing nations).

87. See *Like Minded Group*, *supra* note 62, at 26 (explaining that even if the agenda reflected the developing countries issues they would not automatically participate in negotiations).

88. See *Leader: For the Good of the Globe: Justice Is the Goal for the Doha Trade Talks for Justice*, THE GUARDIAN, Nov. 9, 2001, at 19 (arguing that the unequal bargaining power of the negotiating countries makes the outcome unfair to developing countries).

89. See Ganesan, *supra* note 56, at 86 (stating that this balance should spread through all aspects of the agenda including market access and rule making).

90. See *World Bank Statement at WTO Talks in Doha: Strengthening the International Trade Architecture for Development*, M2 PRESSWIRE, Nov. 12, 2001, at 2 (stating that while many developing countries have been able to gain greater

## D. WORK PROGRAM

The work program itself is spread over three documents, two declarations—a main declaration<sup>91</sup> and one on intellectual property (TRIPs) and public health<sup>92</sup>—and one decision on implementation<sup>93</sup>. The decision is particularly significant because developing nations often encounter difficulties in implementing the current WTO agreements.<sup>94</sup>

The main ministerial declaration elaborates on the conference's objectives by providing timetables for the current negotiations in agriculture and services.<sup>95</sup> The declaration also addresses negotiations or possible negotiations on a range of issues such as industrial tariffs, investment, competition, environmental regulations, and implementation.<sup>96</sup>

Negotiations under the work program should conclude by January 2005,<sup>97</sup> except for the Dispute Settlement Understanding, which should conclude by the end of May 2003.<sup>98</sup> Other elements of the

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market access, many have not because of capacity constraints in trade-related areas).

91. See *Ministerial Declaration*, *supra* note 2, paras. 12-34 (listing each of the work programme initiatives).

92. See World Trade Organization Ministerial Conference, *Declaration on the TRIPs Agreement and Public Health*, WT/MIN(01)/DEC/2 para. 5 (Nov. 20, 2001) [hereinafter *Declaration on TRIPs Agreement and Public Health*] (declaring the purpose for which the declaration was made), available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_trips\\_e.pdf](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.pdf) (last visited Mar. 20, 2002).

93. See World Trade Organization Ministerial Conference, *Implementation Related Issues and Concerns*, WT/MIN(01)/17 (Nov. 20, 2001) (listing the different issues relating to the declaration and the decisions that have been made on that issue), available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindec\\_implementation\\_e.pdf](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindec_implementation_e.pdf) (last visited Mar. 20, 2002).

94. See *id.* (announcing that the agreement intends to address the particular concerns of the developing nations regarding the agreements).

95. See *Ministerial Declaration*, *supra* note 2, paras. 13-15 (seeking to "correct and prevent restrictions and distortions in world agricultural markets").

96. See *id.* paras. 20-25, 31-33 (explaining that the declaration covers trade in investment, trade and competition, and trade and the environment).

97. See *id.* para. 45 (stating that the negotiations to be pursued under the terms of this Declaration shall be concluded by January 1, 2005).

98. See *id.* para. 30 (proclaiming that negotiations on improvements and

work program will conclude by the end of 2002 or by the next Ministerial Conference.<sup>99</sup>

The declaration on TRIPs and public health recognizes the flexibility that the agreement gives to governments in order to address public health problems.<sup>100</sup> It also establishes specific tasks for the WTO TRIPs Council.<sup>101</sup>

#### E. ANALYSIS OF THE WORK PROGRAM

The Doha Ministerial Declaration is fairly balanced and should be commended for its positive features.<sup>102</sup> The agenda reduces tariffs on industrial goods, phases out farm subsidies, diminishes barriers for foreign investment, and limits the use of "antidumping" laws.<sup>103</sup>

The declaration revitalizes and expands negotiations that seek to liberalize access to markets.<sup>104</sup> The negotiations on agriculture and services have acquired a much-needed motivation.<sup>105</sup> Significant gains should be made in both of these sectors. According to estimates by the World Bank, welfare gains from a fifty percent cut in the service sector would be five times larger than in the non-services

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clarifications of the Dispute Settlement Understanding should conclude by May 2003).

99. *See id.* para. 12 (declaring that outstanding implementation issues will be addressed as a matter of priority by the relevant WTO bodies, which will report to the Trade Negotiations Committee, established under paragraph forty-six of the Declaration).

100. *See Moore Speech, supra* note 5 (stating that there are important elements of flexibility in the TRIPs Agreement that can be used to respond to health emergencies).

101. *See Declaration on TRIPs Agreement and Public Health, supra* note 92 (dictating the WTO TRIPs Council tasks).

102. *See Ministerial Declaration, supra* note 2 (outlining the features of the Doha Ministerial Declaration).

103. *See id.* (discussing the various topics on the agenda that were addressed during the Doha Ministerial Conference).

104. *See* World Trade Organization, *The Doha Declaration Explained* (2002) [hereinafter *Doha Explained*] (explaining the goal of the Doha Declaration and the issues that it encompasses), available at [http://www.wto.org/english/tratop\\_c/dda\\_e/dohaexplained\\_e.htm](http://www.wto.org/english/tratop_c/dda_e/dohaexplained_e.htm) (last visited Mar. 20, 2002).

105. *See id.* (commenting on the development of the negotiations on agriculture and services).

sector.<sup>106</sup> Likewise, the agreement seeks to phase out export subsidies in agriculture, which is of vital importance to developing countries and will greatly add to the global welfare.

#### F. MARKET ACCESS NEGOTIATIONS

The agreement to negotiate market access, covering both tariffs and non-tariff barriers for industrial products, should prove very beneficial.<sup>107</sup> The mandate covers peak tariffs, tariff escalation, and high tariffs.<sup>108</sup> According to an estimate, about two-thirds of the benefits from further reductions in industrial tariffs will go to developing countries.<sup>109</sup>

#### G. NEW ISSUES

To the discomfort of developing countries, the negotiating agenda also covers a range of “new issues” which were among the most confrontational subjects discussed at Doha.<sup>110</sup> Attendees at Doha agreed to establish multilateral frameworks for rules on the competition policy and foreign direct investment, with negotiations beginning after the Fifth Ministerial Conference.<sup>111</sup> While developing

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106. See GLOBAL ECONOMIC PROSPECTS, *supra* note 48, at 77 (explaining that the gains from liberalizing trade in services may have a larger impact than the gains derived from liberalizing trade in goods).

107. See Press Release, Launching ‘Development Round’ Could Help Poor Countries Facing Global Downturn (Oct. 31, 2001) [hereinafter Development Round Press Release] (stating that removing barriers to trade, which was the topic of the meetings at Doha, could significantly boost the long-term prospects of developing countries), available at <http://lnweb18.worldbank.org/new/pressrelease.nsf/Press+Release/772CF09B7E66B04B85256AF600590AAE.htm> (last visited Mar. 20, 2002).

108. See Ministerial Declaration, *supra* note 2, paras. 1-12 (presenting the mandate of the declaration and the commitment to developing countries and multilateral trading).

109. See Moore Speech, *supra* note 5 (providing that tariff reduction is a key objective for developing countries and therefore concluding that tariff reductions should benefit them the most).

110. See Ministerial Declaration, *supra* note 2 (mapping out the agenda of the declaration, including the subjects that the developing countries were not happy about).

111. See *id.* paras. 20-25 (establishing the position of the negotiators at Doha on these two issues).



countries must live with this development, it is not without some redeeming features.<sup>112</sup> A multilateral framework could bring more coherence to an area now dependent on a huge number of bilateral investment treaties, thus moving from a system based mainly on bilateral arrangements to one organized around a single multilateral framework.<sup>113</sup>

#### H. POSSIBLE EXPANSION OF THE RANGE OF NEGOTIATIONS

The Declaration also envisages possible negotiations after the Fifth Ministerial on transparency in the government procurement and on trade facilitation.<sup>114</sup> The trade facilitation mandate addresses issues relevant to the movement of goods in international trade and a successful negotiation would help reduce costs and delays involved in conducting international business.<sup>115</sup> The government procurement issues should not scare developing countries because increased transparency and better quality in the government procurement process is in the larger public interest of society.<sup>116</sup> It will contribute to greater probity in governmental business, improve the investment climate and benefit the supply capacity of developing countries.<sup>117</sup>

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112. See *Doha Explained*, *supra* note 104, para. 12 (clarifying the implementation concerns associated with the declaration).

113. See Moore Speech, *supra* note 5.

114. See Ministerial Declaration, *supra* note 2, paras. 26-27 (recognizing the need for further negotiations to build on the progress made by the Working Group on Transparency and the Council for Trade in Goods).

115. See *id.* at 27 (discussing issues relevant to the movement of goods in international trade).

116. See World Trade Organization, *Transparency in Government Procurement, Applying Fundamental WTO Principle on How Governments Buy Goods and Services* (2002) (asserting that the object of transparency provisions is not only to ensure that adequate information on procurement opportunities is made available and that decisions are fairly taken, but also to facilitate monitoring of commitments), available at [http://www.wto.org/english/thewto\\_...n99\\_c/english/about/e17proce.htm](http://www.wto.org/english/thewto_...n99_c/english/about/e17proce.htm) (last visited Mar. 20, 2002).

117. See *id.* (discussing the goals of the transparency in government procurement process).

## I. TRADE AND ENVIRONMENT

The European Union made it a significant priority to address concerns about the impact of trade on the environment.<sup>118</sup> This discussion would also help the European Union sell the idea of concessions on agriculture to its citizens. In contrast, many developing countries perceived this discussion as a pretext for promoting protectionism.<sup>119</sup> Attempts to negotiate on the need for environmental protection emphasized both the relationship between existing WTO rules and the trade obligations in Multilateral Environmental Agreements, and the reduction or elimination of tariff and non-tariff barriers to environmental goods and services.<sup>120</sup> These discussions, as such, should not pose any serious problems although the misuse of environmental and labor issues is an uncomfortable possibility because narrow special interests can undermine the whole process and protectionism in its new garb can derail liberalization efforts. As Joseph Stiglitz rightly cautions, "Other protectionists try to enlist environmental and labor for other types of protection. While it is imperative that the international community continue to pursue good environmental policies and core labor standards, it should resist this unholy alliance of interest."<sup>121</sup>

## V. ASSESSMENT OF THE DDA'S ADEQUACY FOR DEVELOPING COUNTRIES

### A. RESERVATIONS ON PART OF SOME DEVELOPING COUNTRIES

After their experience in the Uruguay Round and the Seattle fiasco, developing countries have been skeptical and even cynical about the outcome at Doha.<sup>122</sup> Some, in their private evaluations,

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118. See Moore Speech, *supra* note 5 (stating that "trade and the environment was one of the most difficult issues at Doha").

119. See *id.* (addressing the give and take on issues during the negotiations so that all countries could have their priorities heard).

120. See *id.* (underscoring that the Committee on Trade and the Environment will examine the effect of the environment on market access).

121. Stiglitz, *supra* note 23, at 19.

122. See Moore Speech, *supra* note 5 (describing how some feel that the Doha Agreements are a disaster for developing countries but noting that these critics fail

even regarded Doha to be a failure although this assessment seems both incorrect and unfair.

## B. CRITICISMS OF THE DDA

Although the reaction to the following criticism by Mike Moore is high pitched, it has a substantial ring of validity about it:

It has been said by some that the Doha Agreements are a disaster for developing countries. This is a truly spectacular misreading of what happened there: For some of these critics, there is no conceivable text or process that would not be represented as a conspiracy against developing countries and the poor, but no unprejudiced reader of the Doha texts could fail to appreciate the common theme that runs through almost every paragraph, which is the fuller integration of developing countries into the trading system. Provision is made in almost every area for capacity building to help developed countries participate in and profit from the work. Special and differential treatment provisions will be reviewed and strengthened to make them more effective and operational.<sup>123</sup>

## C. A FAIR DEAL FOR DEVELOPING COUNTRIES IN THE DDA

Developing countries should dispassionately reassess the Doha outcome.<sup>124</sup> They have cause to derive a significant amount of satisfaction from the Doha Declaration and the work program as it stands today.<sup>125</sup> They have demonstrated their bargaining clout in the agenda setting process.<sup>126</sup> The Doha negotiations could reach a successful conclusion when the United States and Europe make significant concessions to the developing world, some of which are understandably regarded as an anathema to both pharmaceutical and steel companies in the United States and farmers in Europe.<sup>127</sup>

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to appreciate the common theme that runs through the documents—integration of developing countries into the trading system).

123. *Id.*

124. See *infra* notes 125-127 and accompanying text (highlighting the benefits of the DDA for developing nations).

125. See Moore Speech, *supra* note 5 (declaring that there are enough important initiatives in the Doha package to satisfy all of the disparate parties).

126. See *The Doha Agenda*, *supra* note 1 (highlighting the influence of developing countries in the negotiations and agenda setting process).

127. See Development Round Press Release, *supra* note 107 (reporting that to

Of course, an agreement on an agenda is just the beginning of the process. The arduous portion of the journey lies ahead. The agreed agenda “essentially becomes a game plan for negotiations by the 142 nations—and can foretell the ultimate outcome.”<sup>128</sup> It will take several years of hard bargaining before a positive outcome is achieved and this is the challenge to which developing countries have to make an adequate response.<sup>129</sup>

#### D. IMPLEMENTATION ISSUES

As to the critical issues of implementation, the separate decisions on issues raised by the developing countries about the implementation of the Uruguay Round agreements signifies that a large number of these problems are already resolved.<sup>130</sup> About fifty of these problems have been transformed from unilateral requests into multilateral commitments to negotiate, which further underscores the possibility of substantial progress.<sup>131</sup>

### VI. STRATEGY FOR EFFECTIVENESS

#### A. EFFORTS ON A WIDE SPECTRUM

In order to ensure a positive outcome in the DDA negotiations, developing countries must make serious efforts to change their mindset by improving their knowledge of the issues, upgrading their skills, and affecting fundamental domestic reforms.<sup>132</sup> Although it may be regarded as presumptuous to give any advice to seasoned

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remove barriers to trade, developed countries must be willing to place agriculture and textiles on the negotiating table).

128. Cooper & Winestock, *supra* note 1, at A1 (stating that the admission of China and Chinese Taipei has already increased the organization’s membership from one hundred forty-two to one hundred forty-four).

129. See Ministerial Declaration, *supra* note 2, para. 45 (deeming 2005 as the date for completing most negotiations).

130. See *Doha Explained*, *supra* note 104 (citing the obligations of developing countries with respect to agenda items).

131. See *id.* (stating that negotiations on outstanding implementation and trade issues will become an integral part of the work program).

132. See Cooper & Winestock, *supra* note 1 (discussing the challenges that developing countries face).

practitioners, perhaps some suggestions from one who is now away from the battleground and consequently with a different perspective, may be useful.<sup>133</sup>

## B. SOME SUGGESTIONS

### 1. *Mindset, Attitudes, and Perspectives*

Developing nations must change their mindset, attitudes, and perspectives. Doha was not a setback. In reality, it was a significant step forward for both the developed and developing worlds.<sup>134</sup> Of course, it does not represent a dramatic breakthrough (nor was it expected to be so), but it is both a reasonable and pragmatic compromise.<sup>135</sup> In examining Doha, one should think of a glass half-full rather than the contrary image of a glass half-empty.<sup>136</sup>

Nations should learn lessons from past experiences without lamenting upon them. Justice is a rare commodity in the world and one may never get what one deserves.<sup>137</sup> Dwelling upon injustices of

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133. See *infra* notes 134-154 and accompanying text (detailing certain suggestions for developing nations).

134. See Michael M. Weinstein, *A Better Chance for Free Trade*, N.Y. TIMES, Nov. 20, 2001, at A19 (reporting that the agreement reached in Doha is good for rich countries and perhaps even better for poor countries).

135. See Moore Speech, *supra* note 5 (recognizing the willingness of all Ministers to make concessions in order to achieve consensus, thereby allowing a compromise to be reached).

136. Developing nations believe that they have achieved a significant amount of progress at Doha. See *Declaration on TRIPs Agreement and Public Health*, *supra* note 92 (striking a balance between countries' right to act to protect Public Health and the need to avoid undermining the TRIPs Agreement); see also Ministerial Declaration, *supra* note 2 (committing to negotiate on antidumping regulations and subsidies/countervailing rules that should be welcomed by developing countries). Again, an understanding on dispute settlements for improvements and clarifications is a positive development. See generally Schneider, *supra* note 39, at 702. Similarly, the use of a Working Group to examine the relationship between trade, debt, and finance as well as between trade and the transfer of technology can only benefit developing countries. See generally Ministerial Declaration, *supra* note 2.

137. See WAYNE W. DYER, YOUR EROGENOUS ZONES 173 (1965) (commenting that justice is simply a concept that has almost no applicability, particularly as it pertains to your own choice). The legal system promises justice, but it generally does not occur unless people work to foster it. *Id.*

the past and indulging in self-pity will immobilize both developed and developing nations in the present and the future.<sup>138</sup>

In order to succeed in a multilateral regime, developing nations must improve their knowledge of the rules of the game. Developing nations should constantly strive to expand their understanding of the global trading architecture and learn to appreciate its strengths, weaknesses, opportunities, and constraints. Such nations can formulate effective strategies only if they are aware of both the external environment and the dynamics of the institution.<sup>139</sup>

Developing nations should work to adopt a holistic approach to solving their problems. The framework of the WTO cannot adequately address all of the problems bearing on a development agenda in the sphere of trade.<sup>140</sup> It is necessary to go beyond the WTO, by building alliances and securing aid for trade.<sup>141</sup> It is worthwhile to establish a link in the minds of the industrial world, between improving the global trade architecture and reducing poverty in developing countries.<sup>142</sup>

## 2. *New Paradigm*

Developing nations should work to foster a new paradigm within their trade relationships.<sup>143</sup> The dynamics and logic of globalization are transforming relationships between countries.<sup>144</sup> These

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138. See *id.* at 165 (stating that self-defeating behavior results in immobilization, which in turn promotes a no-justice-reality).

139. See *id.* at 167 (discussing strategies to overcome the realities of injustice).

140. See GLOBAL ECONOMIC PROSPECTS, *supra* note 48, at xii (discussing the report of four policy domains and contending that providing market access may not by itself be enough to elicit new trade from developing countries).

141. See *id.* at xiii (suggesting that increasing multilateral "aid for trade" development assistance to promote trade infrastructure could help developing nations).

142. See *id.* (highlighting that reshaping global trade architecture for development would reduce world poverty).

143. See *infra* notes 144-147 and accompanying text (detailing how recent events have changed certain relationships between the developed and developing worlds).

144. See Schott, *supra* note 65, at 71 (discussing the new paradigm shift in trade relationships). The developing countries need to reassess their priorities in view of a paradigm shift in trade relationships. For example, in the past, trade negotiations

transformed relationships have become more pronounced since the terrorist attacks on September 11, 2001.<sup>145</sup> The attacks have made the world more conscious of its indivisibility, security, and prosperity.<sup>146</sup> There are no longer any separate categories of “industrial” and “developing” countries and, in the future, more alliances that are subject specific will transcend the divide between developing and industrial countries.<sup>147</sup>

Developing nations should also seek to improve their knowledge about the multilateral trading system. By improving knowledge, they can diminish the fear of the unknown with respect to new issues and find opportunities to bargain with the developed countries for a better deal. On other issues, they must learn to engage positively in order to appreciate the concerns of industrial countries.<sup>148</sup> With respect to investment, transparency, and trade facilitation, there is a possibility

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placed significant emphasis on the issues of specialized and differential treatment. See Watal, *supra* note 44, at 73. Although the Doha Declaration has reaffirmed this principle, it has not yet achieved any concrete or tangible results. Instead of spending their energy on this issue, developing nations should think proactively in identifying their own interests and make appropriate bargains as equal partners in the system. Developing countries should concentrate on demanding improved market access to counterbalance proposals made by the industrial countries to expand the WTO agenda. In fact, developing nations have sought modifications in a wide range of existing agreements to take into account their trade interests or special problems, including the ‘operationalizing’ of special and differential trade provisions.” *Id.*

145. See WTO Doha, *Closing Press Conference Fourth WTO Ministerial Conference*, Nov. 14, 2001 (stating that September eleventh served to focus all our minds on the need to send a strong political signal of confidence in the multilateral international system and the need to inject optimism into a gloomy economic landscape), available at <http://www.wtodoha.org/news/article21.htm> (last visited Mar. 20, 2002).

146. *Id.*

147. See Michael White, *Isolationism Not An Option for the West, Says Blair*, THE GUARDIAN, Nov. 13, 2001 (stating that September eleventh served to focus all of our minds on the need to send a strong political signal of confidence in the multilateral international system and the need to inject optimism into a gloomy economic landscape), available at <http://www.guardian...ponse/story/0,11017,59249,00.htm> (last visited Mar. 20, 2002).

148. See generally World Trade Organization, *Ten Misunderstandings About the WTO, Small Countries are Not Powerless in the WTO* (discussing the influence of small countries when they engage in the WTO), available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/10mis\\_e/10m07\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/10mis_e/10m07_e.htm) (last visited Apr. 9, 2002).

of clear trade offs between issues that are of interest to developing countries such as agriculture, anti-dumping regulations, and peak industrial tariffs.

The WTO and industrial countries should be persuaded to convert "best endeavor" promises to binding commitments, whereby they will provide low-income countries with financial and technical assistance to implement WTO accords and build capacity. To achieve this goal, developing nations should improve their negotiating skills.

In order to derive optimum benefits from gains in the WTO framework, developing nations should adopt specific domestic reforms.<sup>149</sup> They should first adopt a program of trade reform, including the phased lowering of border protection for goods and services as part of a poverty reduction strategy.<sup>150</sup> As part of any trade reform program, developing countries should also adopt companion policies to both cushion any adverse impact on the poor and ensure investment responses by soliciting foreign assistance when necessary to implement administrative requirements of programs.

Developing nations should also spur the development of industries essential to trade and business services, particularly through the introduction of favorable regulatory incentives. They can also encourage domestic intellectual property development through TRIPs-consistent standards appropriate to their needs.<sup>151</sup> Finally, developing nations can ensure an adequate macroeconomic policy framework to provide a sound investment climate.<sup>152</sup>

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149. See GLOBAL ECONOMIC PROSPECTS, *supra* note 48, at xii (stating that in order for trade talks to succeed, the global community will need to ensure that the world's poorest countries and poorest people will derive some benefit).

150. See *id.* (explaining that the reduction of restrictions on products and services produced by poor countries is needed).

151. See Agreement on Trade-Related Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, art.66, para. 1, Legal Instruments—Results of the Uruguay Round vol. 31, 33 I.L.M. (1994) (defining TRIPS standards).

152. See THE WORLD BANK, GLOBAL ECONOMIC PERSPECTIVES AND THE DEVELOPING COUNTRIES: MAKING TRADE WORK FOR THE WORLD'S POOR xviii (2002) (establishing a four part policy agenda that seeks to promote world trade in a manner that will benefit low income nations). It recommends: 1) convening a



## CONCLUSION

The Doha Development Agenda clearly acknowledges the need to put developing countries' concerns at the core of any multilateral trading system. The Ministerial Declaration Decisions on Implementing Related Issues and the TRIPs Agreement reflect a movement to remove imbalances from the system and make it multilateral in the true sense of the word. The DDA is full of rich possibilities and can become a potent force for liberalizing trade, stimulating growth, both in industrial and developing countries, while simultaneously reducing poverty throughout the world.<sup>153</sup> If the Round does not succeed, however, there are going to be both repercussions and a lasting negative impact. As Joseph Stiglitz appositely notes:

If negotiations follow historical patterns—hard bargaining motivated by special interests within developed countries, with too little attention paid to the interests of the developing countries—they could strengthen the hand of those in the developing world who resist market reforms and an outward orientation. It could give confirmation and ammunition to those who see relations between the Third World and the developed countries through the prism of conflict and exploitation, rather than recognizing the potential for cooperation and mutual gain. Outward-oriented policies will

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development round in the WTO to include market access in areas of agriculture, manufacturing and services and improving WTO transparency, participation, implementation procedures and phasing; 2) global cooperation to support trade outside the WTO; provide “aid for trade” through stepped up development assistance, expand “Integrated Framework” assistance to all low-income countries, and expand multilateral assistance to overcome country-specific bottlenecks to improving competitiveness and trading potential and to promote trade; 3) policies for high-income countries to promote market access, grant to low-income countries duty-free and quota-free access to markets of all countries of OECD, reduce uncertainty of market access by harmonizing rules of origin, and by reducing threats of antidumping and adopt domestic policies that facilitate adjustment of labor to economic change; and 4) Policies for developing countries as explained in the text. *Id.* According to estimates of the World Bank, following the above four-part policy agenda can yield very high benefits and help in reducing poverty. *Id.* Developing countries can reap income gains in 2015 attributed to trade liberalization of \$500 (in 1997 dollars) if measured in dynamic terms or \$355 billion if measured in static terms (static results assumes that productivity be constant while dynamic gains allow productivity to respond to sector-specific export to output ratios). *Id.*

153. See Moore Speech, *supra* note 5 (expressing that Doha will be remembered as a turning point in the history of the WTO and the world trading system).

succeed only to the extent that there are markets in which developing countries can sell their products, as well as international rules that allow developing countries to make good use of their areas of comparative advantage.<sup>154</sup>

Thus, the DDA presents historic challenges and opportunities for the multilateral trading system.

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154. See Stiglitz, *supra* note 23, at 23 (emphasizing the importance, especially for developing countries, of fairness in the rules governing future trade talks).

